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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-526*

13 **MICHAEL JAMES SHUPE**
24839 N 43rd Drive
14 **Glendale, AZ 85310**

A C C U S A T I O N

15 **Registered Nurse License No. 574868**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On December 8, 2000, the Board of Registered Nursing issued Registered Nurse
23 License Number 574868 to Michael James Shupe (Respondent). The Registered Nurse License
24 expired on June 30, 2008, and has not been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license within eight years after expiration.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480;
- or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a

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1 person who holds a license, upon the ground that the applicant or the licensee has
2 been convicted of a crime substantially related to the qualifications, functions, and
3 duties of the licensee in question, the record of conviction of the crime shall be
4 conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

6 As used in this section, "license" includes "certificate," "permit,"
7 "authority," and "registration."

8 10. Section 2761 of the Code states:

9 The board may take disciplinary action against a certified or licensed
10 nurse or deny an application for a certificate or license for any of the following:

11 (a) Unprofessional conduct, which includes, but is not limited to, the
12 following:

13

14 (f) Conviction of a felony or of any offense substantially related to the
15 qualifications, functions, and duties of a registered nurse, in which event the
16 record of the conviction shall be conclusive evidence thereof.

17

18 11. Section 2765 of the Code states:

19 A plea or verdict of guilty or a conviction following a plea of *nolo*
20 *contendere* made to a charge substantially related to the qualifications, functions
21 and duties of a registered nurse is deemed to be a conviction within the meaning
22 of this article. The board may order the license or certificate suspended or
23 revoked, or may decline to issue a license or certificate, when the time for appeal
has elapsed, or the judgment of conviction has been affirmed on appeal or when
an order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under the provisions of Section 1203.4 of the
Penal Code allowing such person to withdraw his or her plea of guilty and to enter
a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
accusation, information or indictment.

24 REGULATORY PROVISIONS

25 12. California Code of Regulations, title 16, section 1444, states:

26 A conviction or act shall be considered to be substantially related to the
27 qualifications, functions or duties of a registered nurse if to a substantial degree it
28 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those
2 violations listed in subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to
6 Section 290 of the Penal Code.

7 13. California Code of Regulations, title 16, section 1445 states:

8

9 (b) When considering the suspension or revocation of a license on the
10 grounds that a registered nurse has been convicted of a crime, the board, in
11 evaluating the rehabilitation of such person and his/her eligibility for a license
12 will consider the following criteria:

13 (1) Nature and severity of the act(s) or offense(s).

14 (2) Total criminal record.

15 (3) The time that has elapsed since commission of the act(s) or
16 offense(s).

17 (4) Whether the licensee has complied with any terms of parole,
18 probation, restitution or any other sanctions lawfully imposed against the
19 licensee.

20 (5) If applicable, evidence of expungement proceedings pursuant
21 to Section 1203.4 of the Penal Code.

22 (6) Evidence, if any, of rehabilitation submitted by the licensee.

23 **COST RECOVERY**

24 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
25 the administrative law judge to direct a licentiate found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 **CAUSE FOR DISCIPLINE**

(January 19, 2012 Criminal Conviction for Lewd Conduct On June 19, 2009)

15. Respondent has subjected his registered nurse license to disciplinary action under
Code sections 490 and 2761, subdivision (f), in that he was convicted of a crime that is
substantially related to the qualifications, functions, and duties of a registered nurse. The
circumstances are as follows:

1 a. On January 19, 2012, in a criminal proceeding entitled *The People of the*
2 *State of California v. Michael James Shupe*, in Riverside County Superior Court, Larson Justice
3 Center, case number INM199548, Respondent was convicted of violating Penal Code (PC)
4 section 647, subdivision (a), lewd or dissolute conduct in any public place or in any place open
5 to the public or exposed to public view, a misdemeanor. A charge for violation of PC section
6 314.1, indecent exposure of person, or the private parts thereof, in any public place, or in any
7 place where there are present other persons to be offended or annoyed thereby, a misdemeanor,
8 was dismissed pursuant to a plea bargain.

9 b. As a result of the conviction, Respondent was granted 36 months summary
10 probation and sentenced to be committed to the custody of the Riverside County Sheriff for one
11 day, with credit for time served during presentencing. Respondent was ordered to pay penalty
12 assessments, fees, and fines.

13 c. The facts that led to the conviction are that on June 20, 2009, Respondent
14 sat on his car in a parking lot in Palm Springs, California. As an undercover officer of the Palm
15 Springs Police Department walked between two cars, Respondent approached the officer and
16 unzipped his shorts. Respondent then pulled out his private part exposing it to the officer.
17 Respondent thereafter stimulated his penis with no attempt to hide himself although he was in
18 full view of the street and passing traffic. The officer then gave a predetermined arrest signal.
19 The officer was wired and the incident was video taped.

20 DISCIPLINARY CONSIDERATIONS

21 16. Pursuant to California Code of Regulations, title 16, section 1445, to determine
22 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on
23 September 19, 2000, Respondent admitted to the Board in his *Application for California RN*
24 *Licensure By Endorsement*, that in a criminal proceeding entitled *The People of the State of*
25 *Arizona vs. Michael James Shupe*, in Glendale City Court, he was convicted of the offense of
26 having sex with a minor in a public facility on February 1, 1982, a misdemeanor.

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1 **PRAYER**

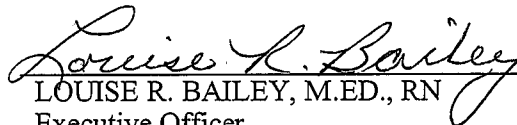
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 574868, issued to
5 Michael James Shupe;

6 2. Ordering Michael James Shupe to pay the Board of Registered Nursing the
7 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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13 DATED: DECEMBER 27, 2012


14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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